

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA)	
)	Criminal No.: 3:00-CR-400-P
v.)	
)	Judge Jorge A. Solis
MARTIN NEWS AGENCY, INC.; and)	
BENNETT T. MARTIN,)	
)	FILED: June 22, 2001
Defendants.)	

**MOTION *IN LIMINE* OF THE UNITED STATES TO EXCLUDE
IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME**

The United States moves this Court for a ruling in limine excluding from admission at trial any evidence, either documentary or testimonial (including cross or direct examination), or any argument by defense counsel to impeach any witness by introducing evidence of conviction of a crime beyond that which is permitted under Fed. R. Crim. P. 609. Here, the United States anticipates that defense counsel may seek to introduce into this trial, either through impeachment or testimonial or documentary evidence, a nolo contendere conviction in 1974 against Galveston News Agency, Inc. (“Galveston News”). Brian Weiner, one of the government’s trial witnesses, was an officer at Galveston News at the time of the conviction. This conviction involved a misdemeanor violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

Because of the highly prejudicial nature in injecting prior convictions into a trial, Rule 609 sets forth the limited circumstances under which evidence of conviction of a crime may be used to impeach a witness during trial. Moreover, under Fed. R. Evid. 403, the United States submits that there is no other federal rule of evidence that would allow this type of impeachment testimony or argument to be introduced, because the prejudicial nature of such prior conviction

evidence is so overwhelmed by the limited probative value of a nolo conviction from 27 years ago that involved a witness's company for conduct in another geographic market for an agreement that involved a completely different set of competitors.

Accordingly, the United States respectfully requests that this Court grant its motion in limine and enter an Order excluding evidence or argument related to this prior conviction at trial.

Respectfully Submitted,

SCOTT M. WATSON
Chief, Cleveland Field Office Ohio Bar Number--0042399

“/s/”
RICHARD T. HAMILTON, JR.

MICHAEL F. WOOD
District of Columbia Bar Number--376312

KIMBERLY A. SMITH
Ohio Bar Number--0069513

SARAH L. WAGNER
Texas Bar Number--24013700

Attorneys, Antitrust Division
U.S. Department of Justice
Plaza 9 Building, Suite 700
55 Erieview Plaza
Cleveland, OH 44114-1816
Telephone: (216) 522-4107
FAX: (216) 522-8332

CERTIFICATE OF CONFERENCE

This is to certify that the undersigned attorney left a telephone message with Michael P. Gibson, counsel for Bennett T. Martin, and Richard A. Anderson, counsel for Martin News Agency, Inc., on June 21, 2001, advising them of the Motion.

SIGNED this 21st day of June, 2001.

“/s/”

RICHARD T. HAMILTON, JR.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via Federal Express to the Office of the Clerk of Court on this 21st day of June, 2001. In addition, copies of the above-captioned pleading were served upon the defendants via Federal Express on this 21st day of June, 2001.

Richard Alan Anderson, Esq.
Burleson, Pate & Gibson, L.L.P.
2414 N. Akard, Suite 700
Dallas, TX 75201

Michael P. Gibson
Burleson, Pate & Gibson, L.L.P.
2414 N. Akard, Suite 700
Dallas, TX 75201

“/s/”

RICHARD T. HAMILTON, JR.